

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2011 of 2001

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI

and

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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N A PANCHAL

Versus

UNION OF INDIA  
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Appearance:

MR KK SHAH for Petitioner No. 1  
MR MUKESH A PATEL for Respondent No. 1  
NOTICE SERVED for Respondents No. 2,4  
NOTICE UNSERVED for Respondent No. 3  
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CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI  
and  
MR.JUSTICE K.A.PUJ

Date of decision: 11/01/2002

CAV JUDGEMENT

(Per : MR.JUSTICE K.A.PUJ)

Heard Mr. K.K. Shah, learned advocate for the petitioner and Mr. Mukesh A. Patel, learned advocate for the respondents. This Court has passed an order on 19.12.2001 to put up the matter on 21.12.2001 for final disposal. The matter was thereafter placed for final hearing on 21.12.2001, 24.12.2001 and finally on 26.12.2001. The learned advocate for the petitioner was heard at length in the matter and the written submissions filed by the learned advocate for the respondents on 28.12.2001 are also taken into consideration while deciding this matter.

2. In the present petition, the petitioner has sought the direction for modification in the order passed by the Central Administrative Tribunal in O.A. No. 493 of 1992 and Review Application No. 224/2000 to the extent of granting further relief which was not granted by the Tribunal by awarding that the petitioner was eligible and entitled for the relief of interest on the illegally withheld amount of gratuity and retiral benefits by respondent Railway and therefore the respondents be directed to pay the interest at the rate of 24% p.a. from the date, on which the petitioner has retired from the railway service till the date of actual payment. To appreciate the claim of the petitioner in the present petition, few facts are required to be noted. It is the case of the petitioner that he voluntarily retired from the railway service on 30.9.1987 and the said date of retirement was accepted by the railways. However, due to the penalty order passed the gratuity and retiral dues to the extent of Rs. 79,142.27 ps. were withheld by the respondents. Being aggrieved by the said order, the petitioner had filed O.A. No. 493/92 before the Tribunal and the said O.A. was decided by the Tribunal on 9.2.2000 directing the respondents to release the amount of Rs. 79,142.27 ps. withheld from the retiral benefits of the petitioner within 12 weeks from the date of receipt of the copy of the said order by the respondents.

3. Since the Tribunal has not given any finding with regard to granting of interest on the delayed payment of gratuity and retiral benefits, the petitioner had moved Review Application No. 24 of 2000 in O.A. No. 493/92 before the Tribunal requesting the Tribunal to clarify with regard to the relief of interest to be paid with 24% p.a. on the amount of Rs. 79,142.27 ps., withheld by the respondent-railway. The said Review Application was decided by the Tribunal on 13.4.2000 and it was held by the Tribunal that keeping in view the particular

circumstances, the Tribunal has issued direction to the respondents to release the withheld amount only after quashing the impugned orders. As the claim for payment of interest was not granted, it should be presumed that the Tribunal rejected the same. The Tribunal has, therefore, come to the conclusion that there was no error apparent on the face of the judgment which would warrant interference.

4. Being aggrieved by the said order of the Tribunal, the petitioner has filed the present petition in this Court. It was argued before us by the learned advocate of the petitioner that the date on which the amount was actually to be made available to the petitioner was in September 1987 when he took voluntary retirement, was not paid to him because of the penalty order. However, the said penalty order was challenged before the Tribunal in 1992 and the Tribunal has decided only in February 2000 quashing and setting aside the penalty order and directing the respondents to release the amount withheld by the respondents. It was therefore contended by the petitioner's ld. advocate that since the amount of retiral dues of gratuity was withheld as a penalty and since the penalty was found illegal and the order imposing such penalty was quashed and set aside by the Tribunal, the said amount has become due and payable from the date on which the same was actually made available to the petitioner and, therefore, if the petitioner would have got the said amount in the year 1987, the said amount would have become at least three times more by way of interest accrued on the said amount, at the time when the amount was actually paid to the petitioner pursuant to the order of the Tribunal. It was further contended that because of withholding of such amount in the year 1987, the petitioner was put into financial difficulty and it was not possible to maintain the affairs of his family and he was also unable to take further treatment of his eyes. It was therefore submitted by the petitioner that it was the fit case to award the interest on the amount withheld by the respondents by way of penalty from the date it was made available to the petitioner. In support of his contention, the petitioner has also relied on Rule 303 of Railway and Retirement Benefits, 1994. Sub-rule (b) and (c) of Rule 303 read as under :

"303. Interest on Delayed Payment of Retirement Gratuity/Death Gratuity on Retirement or Superannuation.

(a).....

(b) In case of Railway servants against whom disciplinary or judicial proceedings have been instituted and on the conclusion of proceedings they are fully exonerated, the interest on delayed payment of Death Gratuity/Retirement Gratuity may be allowed in their cases. In such cases, the gratuity will be deemed to have fallen due on the date following the date of retirement for the purpose of payment of interest on delayed payment of gratuity. The benefit of these instructions will, however be available to such of the Government servants who die during the pendency of judicial/disciplinary proceedings against them and against whom proceedings are consequently dropped. In such cases, the payment of gratuity will be deemed to have fallen due on the date following the date of death and if the payment of Gratuity has been delayed interest may be allowed for the period of delay beyond three months from the date of death.

(c) In cases where the Railway servant is not fully exonerated on the conclusion of disciplinary/judicial proceedings and where the competent authority decides to allow payment of gratuity, in such cases the payment of gratuity will be deemed to have fallen due on the date of issue of orders by the competent authority. If the payment of gratuity in such cases is delayed, the interest will be payable beyond three months from the date of issue of orders."

On the basis of the facts and circumstances of the case, and the relevant Rules quoted above, the petitioner has claimed the interest at the rate of 24% p.a. on the amount withheld by the respondents by way of penalty from the date on which he became eligible and entitled to the retirement benefits, till the date of actual payment.

5. The claim of the petitioner was disputed by the respondents and the learned advocate appearing for the respondents filed Written Submissions which is taken on record. It was submitted on behalf of the respondents

that the Tribunal has exercised its judicial discretion on cogent grounds against waiving the enquiry afresh and impliedly for this reason the interest was not granted by the Tribunal. It was further submitted by the respondents' ld. advocate in the Written Statements that the petitioner himself had remained negligent in challenging the orders passed by the authority before the appellate authority and there was unreasonable delay in challenging the order of the appellate authority before the Tribunal. It was also submitted that the withholding of the amount of the retiral benefits was due to the departmental enquiry and proceedings going on against the petitioner and that the Railway Rules empower the Railway to withhold the retiral benefits when such kind of enquiry was pending against the employee. It was also submitted by the respondents' ld. advocate that setting aside of the penalty order was not the absolute acquittal but it was acquittal on technical ground with consciousness that as per law in such circumstances the lapses in the enquiry are to be cured after giving opportunity of hearing and so as to curtail that, the payment of interest qua the amount withheld has been curtailed while exercising the judicial discretion and the said judicial discretion could not be taken into account into the judicial review. It was also submitted by the ld. advocate for the respondents that the provisions contained in Rule 303 are not applicable to the facts of the petitioner's case. On the basis of these grounds urged in the Written Submissions, the respondents' ld. advocate has submitted that the petition filed by the petitioner was not maintainable in the eye of law and the petitioner was not entitled to any relief prayed for in the said petition.

6. Now the short question, for our consideration, is as to whether the petitioner is entitled to the interest on the amount withheld by the respondents, and if the answer to this question is in affirmative, then the question would arise as to from which date to which date the petitioner is entitled to such interest and at what rate. It is an admitted position that the petitioner has opted for voluntary retirement in September 1987, and that has been accepted by the respondent-Board. It is also an admitted position that the petitioner was entitled to gratuity and retiral benefits on the date of his voluntary retirement. It is only because of the penalty imposed by the respondent-Board for the alleged breach committed by the petitioner, the respondents have withheld the amount of gratuity as well as retiral benefits to the extent of the amount of penalty. It is also an admitted position that the order levying the

penalty was ultimately quashed and set aside by the Tribunal and while setting aside as well as quashing of the penalty order, no finding was given by the Tribunal with regard to interest on the delayed payment of the amount of gratuity as well as retiral benefits. It is in view of this admitted position, to say that interest on the amount withheld has not been granted against avoiding the holding of an enquiry afresh does not appear to be correct. Since the petitioner was retired in 1987, no useful purpose could have been served to remand the case back to the disciplinary authority to hold an enquiry afresh. A similar case also arose before the Hon'ble Supreme Court in R. Parangusam vs. Chief Electrical Inspector and Another, reported in (1996) 10 SCC 55, wherein the Court has held as under :

"3.....The tribunal in the impugned order, while setting aside the order of compulsory retirement from service, remitted the matter to the Government to conduct the enquiry afresh after giving opportunity to the appellant and based thereon to pass appropriate orders for fixation of the pension etc. It is not in dispute that the appellant has already retired from service. It is also not in dispute that the advances drawn for construction of the house, allotment of the house in the name of his wife by the Housing Board has already been redone. Consequently, there is no detriment caused to the State. Since he had already retired from service, we think, on the facts and circumstances of the case, it is not a case for conducting a fresh enquiry as directed by the tribunal. The order of the tribunal is set aside. The Government is directed to consider his case for promotion on a par with the juniors who were promoted pending enquiry, and then grant him promotion if he is found eligible with all consequential reliefs. The Government will also redetermine his notional scale of pay on the promotional post and pay the arrears of salary and also pension as if he had retired on promotional post. This action should be taken and payment made within a period of six weeks from the date of the receipt of this order."

In view of the above order of Hon'ble Supreme Court, it is not correct to hold the view that the interest was not granted by the Tribunal only because the matter was not remanded back to the disciplinary authority for making an

enquiry fresh. The Tribunal has not dealt with the issue regarding grant of interest on the amount withheld and since there was an error in the order of the Tribunal to that effect, the petitioner was justified to raise the said issue in the Review Application.

7. With regard to the petitioner's claim for granting of interest he placed reliance on the Rule 303 of Railway and Retirement Benefits, 1994. It is true that the said Rule is having Proviso providing the conditions which observe that "The benefit of this instruction will however be available to such of the Government servants who die during pendency of judicial and/or disciplinary proceedings against them and against whom the proceedings are consequently dropped." However, the payment of interest on delayed payment of gratuity and retiral benefits is not ruled out and it is not the only condition on which the interest can be granted. If in the opinion of the Tribunal or the Court, as the case may be, having regard to the facts and circumstances of the case, the interest is required to be granted on delayed payment of gratuity and retiral benefits, such interest cannot be denied merely on the ground that the same is not contemplated in the Rule prescribed for that purpose. In this connection, it is necessary to refer to the decision of the Hon'ble Supreme Court in State of Gujarat Vs. Umedbhai M. Patel, reported in 2001 (3) SCC 314, wherein the Hon'ble Court has taken the view that, as the authorities did not wait for the conclusion of the enquiry and decided to dispense with the services of the respondent merely on the basis of the allegations which had not been proved and in the absence of any adverse entries in his service record to support the record of compulsory retirement, the High Court was right in holding that the impugned order was liable to be set aside. Three months time was given to the appellant State to comply with the directions of the High Court, failing which the respondents would be entitled to get interest at the rate of 18% for the delayed payment of the pecuniary benefits due to him. In the present case, the order levying penalty was challenged by the petitioner way back in 1992 and the said order was quashed and set aside by the tribunal in February 2000 directing the respondents to release the amount withheld by them due to the levy of penalty. The petitioner was therefore certainly deprived of his legitimate claim for the amount of gratuity as well as the retiral benefits to the extent of the amount retained by the respondents. On the other hand, by retaining the said amount for such a long period, the respondents were benefitted to this extent. We see, therefore, no justification in denying

the claim of interest made by the petitioner in his Review Application before the Tribunal. On the facts and circumstances of the case as well as on the basis of the legal authorities cited above and even on equitable grounds, we hold that the petitioner is entitled to claim interest on the delayed payment of the amount of gratuity as well as retiral benefits. We are, however, of the view that the petitioner's claim regarding interest at the rate of 24% p.a. from the date, on which the petitioner was entitled to retiral benefits on opting for voluntary retirement, i.e. September 1987, cannot be accepted as certain delays are attributed to the petitioner and also the claim of interest at the rate of 24% is excessive and unreasonable. In this view of the matter, we are of the view that the ends of justice would be met if we direct the respondents to grant interest at the rate of 10% p.a., from the date of filing of application by the petitioner before the Tribunal against the order levying penalty till the date of actual payment of the amount withheld by the respondents.

8. The petition is, therefore, disposed of with the aforesaid directions. However, there will be no order as to costs.

[ D.M. Dharmadhikari, J. ]

rmr. [ K.A. Puj, J. ]